

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Repeal Sections 27.20, 27.25, 27.30, 27.35, 27.40,
27.42, 27.45, 27.50, 27.51, and 630.5
and
Amend Sections 29.05, 29.40, 30.00, 120.7, 122, 123,
149, 165, 180, 630, 632, and 747
Title 14, California Code of Regulations
Re: Marine Protected Areas

I. Date of Initial Statement of Reasons: September 20, 2004

II. Dates and Locations of Scheduled Hearings:

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| (a) | Notice Hearing: | Date: October 21, 2004
Location: Concord, California |
| (b) | Discussion Hearing: | Date: December 3, 2004
Location: Monterey, California |
| (c) | Adoption Hearing: | Date: December 3, 2004
Location: Monterey, California |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Existing regulations provide for the protection of marine resources in a variety of marine protected areas (MPAs). These areas were designated using a broad range of authorities over the course of many years. Assembly Bill 2800 (Stats. 2000, ch. 385) enacted the Marine Managed Areas Improvement Act (MMAIA), which among other things, standardized the classification of marine managed areas (MMAs) which include MPAs.

The MMAIA notes in particular that the array of existing classifications for MPAs has led to public confusion about the laws, rules, and regulations that apply to MMAs and that it is the intent of the legislature to establish a new, simplified classification system for State MMAs, including MPAs. The implementing legislation for the MMAIA established the three following MPA classifications, based on the level of take restrictions:

State Marine Reserves – where it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource, except under a permit or specific authorization from the commission for research, restoration, or monitoring purposes.

State Marine Parks – where it is unlawful to injure, damage, take, or possess any living or nonliving marine resource for commercial exploitation purposes. Any human use that would compromise protection of the species of interest, natural community or habitat, or geological, cultural, or recreational features, may be restricted by the commission. The commission may permit research, monitoring, and educational activities and certain recreational harvest in a manner consistent with protecting resource values.

State Marine Conservation Areas – where it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial or recreational purposes, or a combination of commercial and recreational purposes except as specified. The commission may permit research, education, and recreational activities, and certain commercial and recreational harvest of marine resources, provided that these uses do not compromise protection of the species of interest, natural community, habitat, or geological features.

The MMAIA also enacted Fish and Game Code (FGC) sections 1590 and 1591 to authorize the Fish and Game Commission (Commission) to designate, delete, or modify State MPAs, as delineated in Public Resources Code (PRC) subsection 36725(a), and to incorporate by reference the provisions of the MMAIA. This authority reinforced existing Commission authority to establish MPAs.

The MMAIA directs the State to reclassify any existing MPA, including those designated by the Commission, the Legislature, or other entities or processes, based on the management purpose and level of resource protection using the above listed system (PRC Section 36750). The MMAIA also requires that subsequent to this reclassification, the use of all other MPA classifications cease.

The State Interagency Coordinating Committee (SICC) was established pursuant to the MMAIA to identify existing MPAs and recommend their new classifications. The SICC has identified 68 existing marine and estuarine areas that meet the criteria for reclassification established by the MMAIA. The SICC has recommended that the Commission use its authority to reclassify these areas using the new naming system. The Department has also identified two special closures (the area immediately

offshore Año Nuevo State Reserve and the area from Lion Head Point to Arrow Point, Catalina Island) that we recommend the Commission reorganize in Title 14 of the California Code of Regulations (Title 14) to make them more recognizable within the MPA regulations. Twelve additional MPAs in the Santa Barbara Channel Islands region were designated subsequent to the creation of the new naming system and do not need to be renamed.

Specifically, existing regulations and legislation establish MPAs under a variety of designations and in a variety of locations in Title 14 and the FGC. The proposed action will reclassify existing MPAs designated in sections 27.20 through 27.51, 630, and 630.5 of Title 14 and sections 10801, 10900 through 10913, and 10932 of the FGC along with State Park Units with marine or estuarine subtidal components listed in Chapter 10 of Division 3 of Title 14.

The proposed action will rename these existing MPAs, remove those referenced in Title 14 from their current sections, and add them to Section 632 of Title 14. The proposed action will also incorporate those MPAs designated in FGC to Section 632 of Title 14 under their new classifications. The proposed action repeals the existing Title 14 sections for MPAs that are moved to Section 632 in order to facilitate understanding and eliminate unnecessary duplication. The proposed action will also clarify the boundary descriptions and existing regulations for each MPA, without altering the existing regulations or boundaries.

The proposed action will add the general regulations for State Marine Parks to Section 632 for clarity and consistency. Editorial changes are also proposed to improve the clarity and consistency of the regulations and to correct typographical errors found in the above sections. This includes clarifying that transit through existing MPAs with catch onboard and gear stowed is allowed.

The proposed action will change the names of certain areas in addition to their classification to either clarify their physical location or simplify the name. These areas are King Range (Punta Gorda) Marine Resource Protection Act Ecological Reserve, San Diego Marine Life Refuge, and San Diego-La Jolla Ecological Reserve. The proposed new names are Punta Gorda State Marine Reserve, San Diego-Scripps State Marine Conservation Area, and La Jolla State Marine Conservation Area. The changes to the existing MPA classifications and names are summarized in Table 1 below.

Table 1. Summary of existing and proposed MPA classifications and names.

Existing Classification and Name	Proposed Classification and Name
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Existing Classification and Name	Proposed Classification and Name
King Range (Punta Gorda) Marine Resources Protection Act Ecological Reserve	Punta Gorda State Marine Reserve
MacKerricher State Park	MacKerricher State Marine Conservation Area
Point Cabrillo Reserve	Point Cabrillo State Marine Conservation Area
Russian Gulch State Park	Russian Gulch State Marine Conservation Area
Van Damme State Park	Van Damme State Marine Conservation Area
Manchester State Park and Arena Rock Natural Preserve	Manchester and Arena Rock State Marine Conservation Area
Del Mar Landing Ecological Reserve	Del Mar Landing State Marine Park
Salt Point State Park	Salt Point State Marine Conservation Area
Gerstle Cove Reserve	Gerstle Cove State Marine Conservation Area
Fort Ross State Historic Park	Fort Ross State Marine Conservation Area
Sonoma Coast State Beach	Sonoma Coast State Marine Conservation Area
Bodega Marine Life Refuge	Bodega State Marine Reserve
Tomales Bay Ecological Reserve	Tomales Bay State Marine Park
Point Reyes Headlands Reserve	Point Reyes Headlands State Marine Conservation Area
Estero de Limantour Reserve	Estero de Limantour State Marine Conservation Area
Duxbury Reef Reserve	Duxbury Reef State Marine Conservation Area
Farallon Islands Ecological Reserve	Farallon Islands State Marine Conservation Area
Fagan Marsh Ecological Reserve	Fagan Marsh State Marine Park
Peytonia Slough Ecological Reserve	Peytonia Slough State Marine Park
Corte Madera Marsh Ecological Reserve	Corte Madera Marsh State Marine Park
Marin Islands Ecological Reserve	Marin Islands State Marine Park
Albany Mudflats Ecological Reserve	Albany Mudflats State Marine Park
Robert W. Crown Reserve	Robert W. Crown State Marine Conservation Area
Redwood Shores Ecological Reserve	Redwood Shores State Marine Park
Bair Island Ecological Reserve	Bair Island State Marine Park
James V. Fitzgerald Reserve (Marine Life Refuge)	James V. Fitzgerald State Marine Park
Elkhorn Slough Ecological Reserve (National Estuarine Research Reserve)	Elkhorn Slough State Marine Reserve
Hopkins Marine Life Refuge	Hopkins State Marine Reserve
Pacific Grove Marine Gardens Fish Refuge	Pacific Grove State Marine Conservation Area
Carmel Bay Ecological Reserve	Carmel Bay State Marine Conservation Area
Point Lobos Ecological Reserve and Point Lobos State Reserve	Point Lobos State Marine Reserve
Julia Pfeiffer Burns State Park	Julia Pfeiffer Burns State Marine Conservation Area
Big Creek Marine Resources Protection Act Ecological Reserve	Big Creek State Marine Reserve
Atascadero Beach Clam Preserve	Atascadero Beach State Marine Conservation Area
Morro Beach Clam Preserve	Morro Beach State Marine Conservation Area
Pismo Invertebrate Reserve	Pismo State Marine Conservation Area
Pismo-Oceano Beach Clam Preserve	Pismo-Oceano Beach State Marine Conservation Area
Vandenberg Marine Resources Protection Act Ecological Reserve	Vandenberg State Marine Reserve
Refugio State Park	Refugio State Marine Conservation Area
Goleta Slough Ecological Reserve	Goleta Slough State Marine Park
Big Sycamore Canyon Marine Resources Protection Act Ecological Reserve	Big Sycamore Canyon State Marine Reserve
Abalone Cove Ecological Reserve	Abalone Cove State Marine Park

Existing Classification and Name	Proposed Classification and Name
Point Fermin Marine Life Refuge	Point Fermin State Marine Park
Bolsa Chica Ecological Reserve	Bolsa Chica State Marine Park
Catalina Marine Science Center Marine Life Refuge	Catalina Marine Science Center State Marine Reserve
Farnsworth Bank Ecological Reserve	Farnsworth Bank State Marine Conservation Area
Lover's Cove Reserve	Lover's Cove State Marine Conservation Area
Upper Newport Bay Ecological Reserve	Upper Newport Bay State Marine Park
Newport Beach Marine Life Refuge	Robert E. Badham State Marine Park
Crystal Cove State Park	Crystal Cove State Marine Conservation Area
Irvine Coast Marine Life Refuge	Irvine Coast State Marine Park
Laguna Beach Marine Life Refuge	Laguna Beach State Marine Park
Heisler Park Ecological Reserve	Heisler Park State Marine Reserve
South Laguna Beach Marine Life Refuge	South Laguna Beach State Marine Park
Niguel Marine Life Refuge	Niguel State Marine Park
Dana Point Marine Life Refuge	Dana Point State Marine Park
Doheny Beach Marine Life Refuge	Doheny State Marine Park
Doheny State Beach	Doheny State Marine Conservation Area
Buena Vista Lagoon Ecological Reserve	Buena Vista Lagoon State Marine Park
Agua Hedionda Lagoon Ecological Reserve	Agua Hedionda Lagoon State Marine Reserve
Batiquitos Lagoon Ecological Reserve	Batiquitos Lagoon State Marine Park
Encinitas City Marine Life Refuge	Encinitas State Marine Conservation Area
Cardiff State Beach and San Elijo State Beach	Cardiff-San Elijo State Marine Conservation Area
San Elijo Lagoon Ecological Reserve	San Elijo Lagoon State Marine Park
San Dieguito Lagoon Ecological Reserve	San Dieguito Lagoon State Marine Park
San Diego Marine Life Refuge	San Diego-Scripps State Marine Conservation Area
San Diego-La Jolla Ecological Reserve	La Jolla State Marine Conservation Area
Point Loma Reserve	Mia J. Tegner State Marine Conservation Area

The Point Loma Reserve (San Diego County) is currently designated in Section 27.50. The proposed action would not only reclassify this area as a state marine conservation area per the MMAIA and place it in Section 632, but also change its name to the Mia J. Tegner State Marine Conservation Area. The late Dr. Mia J. Tegner was a marine biologist at Scripps Institution of Oceanography and researched the ecology of kelp forest communities and nearshore marine resources. She studied the Point Loma kelp beds for almost three decades, including the ecology of kelp forest communities, sea urchins and abalone populations and ways to incorporate environmental variability into fisheries management. Dr. Tegner died in a diving accident off San Diego in 2001. The Department proposes renaming the Point Loma Reserve in her honor and to recognize her significant contributions to the understanding of the Point Loma kelp beds environment.

The Newport Beach Marine Life Refuge (Orange County) is currently designated in the FGC with accompanying regulations in various sections of Title 14. In 1999 the California Senate passed a resolution urging that this area be known as the "Robert E. Badham Marine Life Refuge". This

resolution sought to acknowledge Mr. Badham's significant contributions to the protection of California's coastline and environment and legislation he authored to support such protection. Pursuant to the new classification system, the proposed action would reclassify this area as a State Marine Park and rename it the "Robert E. Badham State Marine Park".

Other existing regulations refer to these existing MPAs and/or certain MPA designations. The proposed regulation will modify references to MPAs found in sections 29.05, 29.40, 30.00, 120.7, 123, 165, and 747 of Title 14 to comply with the new naming system. Editorial changes are also proposed to improve the clarity and consistency of the regulations and typographical errors found in these sections will be corrected.

Existing regulations found in Section 123 of Title 14 allow for commercial lobster, sea cucumber, crab, and sea urchin permit holders to operate in the area between the high tide mark and 1,000 feet beyond the low tide mark without possessing a Tidal Invertebrate Permit. The Tidal Invertebrate Permit requirements include prohibitions of take in certain existing classifications of MPAs. The exemption from the Tidal Invertebrate Permit requirement does not exempt the above fisheries from the other take prohibitions found in Section 123. As in the existing regulations for sea urchin permit holders (Section 120.7 of Title 14), the proposed regulations will add a statement to Section 122 (lobster permits) and 180 (trap permits) noting the provisions of Section 123 still apply.

Existing policy allows commercial market squid permit holders to operate without a Tidal invertebrate Permit as well, though this exemption is not currently listed in Section 123. The proposed regulations will add this exemption to Section 123 and add a statement to Section 149 noting the exemption. Editorial changes are also proposed to improve the clarity and consistency of the regulations in sections 123 and 120.7.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 203.1, 205(c), 219, 220, 1590, 1591, 2860, 2861(c), and 6750 Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code.

Reference: Sections 200, 202, 203.1, 205(c), 219, 220, 1580, 1583, 6653, 8420(e), and 8500 Fish and Game Code; and Sections 36725(a) and 36725(e), Public Resources Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None

(d) Identification of Reports or Documents Supporting Regulation Change:

Improving California's System of Marine Managed Areas; Final Report of the State Interagency Marine Managed Areas Workgroup. Resources Agency of California. January 15, 2000.

(e) Public Discussions of Proposed Regulations Prior to Notice publication:

The proposed changes to Title 14 do not alter existing restrictions on take or boundary descriptions of MPAs. As noted above, they simplify the naming of existing MPAs, correct typographical errors, and clarify existing regulations. The following meetings were held as a part of the process to develop the Marine Managed Areas Workgroup report. They discussed conceptual aspects of renaming rather than specific site names:

Wednesday, September 29, 1999
Santa Barbara County Planning Commission Hearing Room
Santa Barbara, CA

Thursday, September 30, 1999
Newport Beach City Council Chambers
Newport Beach, CA

Tuesday, October 5, 1999
State Capitol
Sacramento, CA

Tuesday, October 12, 1999
U.S. Army Corps of Engineers, Bay Model Visitor Center
Sausalito, CA

Wednesday, October 13, 1999
Hopkins Marine Station
Pacific Grove, CA

Thursday, October 14, 1999
City Hall
Trinidad, CA

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The no change alternative would leave existing regulations and classifications for MPAs in place. This would fail to meet the requirements of the MMAIA to reclassify existing areas and implement simplified naming. Existing difficulties with locating MPA regulations within Title 14 and identifying MPA boundaries would not be corrected.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action does not change any existing regulations or restrictions within MPAs. By clarifying the regulations, classifications, and boundary descriptions, the proposed action may enhance compliance and public understanding of these areas.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

Informative Digest/Policy Statement Overview

Existing regulations establish marine protected areas (MPAs) under a variety of designations and in a variety of locations in Title 14 of the California Code of Regulations. Other existing regulations refer to these same existing MPAs and/or MPA designations. As required by the Marine Managed Areas Improvement Act (MMAIA, Stats. 2000, ch. 385) the proposed regulation will reclassify existing MPAs designated in sections 27.20 through 27.51, 630, and 630.5 of Title 14 of the California Code of Regulations (Title 14) and sections 10801, 10900 through 10913, and 10932 of the Fish and Game Code (FGC) along with State Park Units with marine or estuarine subtidal components listed in Chapter 10 of Division 3 of Title 14.

The proposed action will move MPAs designated in Title 14 from their current sections, add them to Section 632, and repeal the existing sections (except those MPAs currently in Section 632) to facilitate understanding and eliminate unnecessary duplication. The proposed action will incorporate those MPAs designated in the FGC to Section 632 of Title 14. The proposed action will clarify the boundary descriptions and existing regulations for each MPA, **without** altering the existing regulations or boundaries. The proposed action will change the names of certain areas in addition to their classification to either clarify their physical location or simplify the name. The proposed regulation will additionally rename the existing Point Loma Reserve (Title 14, Section 27.50) as the “Mia J. Tegner State Marine Conservation Area” and the existing Newport Beach Marine Life Refuge as the “Robert E. Badham State Marine Park”.

The proposed regulation will add the general regulations for State Marine Parks to Section 632. The proposed regulation will modify references to MPAs found in sections 29.05, 29.40, 30.00, 120.7, 123, 165, 180, and 747 of Title 14 to comply with the new naming system. Editorial changes are also proposed to improve the clarity and consistency of the regulations and typographical errors found in these sections will be corrected. This includes clarifying that transit through existing MPAs with catch onboard and gear stowed is allowed.

Existing regulations found in Section 123 of Title 14 allow for commercial lobster, sea cucumber, crab, and sea urchin, permit holders to operate in the area between the high tide mark and 1,000 feet beyond the low tide mark without possessing a Tidal Invertebrate Permit. The Tidal Invertebrate Permit requirements include prohibitions of take in certain existing classifications of MPAs. The exemption from the Tidal Invertebrate Permit requirement does not exempt the above fisheries from the other take prohibitions found in Section 123. The proposed regulations will add a statement to sections 122 (lobster permits) and 180 (trap permits) indicating this and noting the other provisions of Section 123 still apply.

Existing policy permits commercial market squid permit holders to operate without a Tidal invertebrate Permit as well, though this exemption is not currently listed in Section 123. The proposed regulations will add this exemption to Section 123 and add a

statement to Section 149 noting the exemption. Editorial changes are also proposed to improve the clarity and consistency of the regulations in Section 123. All of the above changes are summarized in Table 2 below.

Table 2. Summary of proposed changes.

Section	Summary of Changes
27.20	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.25	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.30	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.35	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.40	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.42	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.45	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
27.50	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632. Rename as the "Mia J. Tegner State Marine Conservation Area".
27.51	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
29.05	Amend MPA name references and designations, add clarifications, and fix typographical errors.
29.40	Amend MPA name references and designations, add clarifications, and fix typographical errors.
30.00	Amend MPA name references and designations and add clarifications
120.7	Amend MPA name references and designations, add clarifications, and fix typographical errors.
122	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
123	Amend MPA name references and designations, add clarifications, and fix typographical errors.
149	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
165	Amend MPA name references and designations and add clarifications.
180	Add clarifying statement that tidal invertebrate permit exemption does not exempt permit holder from tidal invertebrate regulations.
630	Remove existing fully marine areas and move to Section 632, leave areas with a land component but add their marine component to Section 632. Clarify language and add boundary descriptions in Section 632.
630.5	Repeal and move to Section 632 in entirety. Clarify language and add boundary descriptions in Section 632.
632	Add all existing MPAs to this section using new classification system, add clarifying language for their regulations and boundary descriptions, and fix typographical errors.
747	Add new designations to list for guidelines for civil penalties for consistency with new naming system.